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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

FCC 92-465

In the Matter of

Billed Party Preference  
for O+ InterLATA Calls

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CC Docket No. 92-77  
Phase I

REPORT AND ORDER AND REQUEST  
FOR SUPPLEMENTAL COMMENT

Adopted: October 8, 1992; Released: November 6, 1992

Comment Date: December 7, 1992

Reply Comment Date: January 6, 1993

By the Commission: Commissioners Quello, Barrett and Duggan issuing separate statements

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## I. INTRODUCTION

1. This Report and Order considers certain interexchange carrier (IXC) calling card practices in the first phase of our "billed party preference" (BPP) proceeding.<sup>1</sup> In Phase 1, we consider the need to take

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<sup>1</sup> This docket was established to examine long term issues related to IXC card practices, including a BPP routing system for all 0+ interLATA calls, and short term proposals by many of AT&T's competitors to restrict the use of proprietary IXC cards with 0+ access. In the Matter of Billed Party Preference for 0+ InterLATA Calls, Notice of Proposed Rulemaking, CC Docket No. 92-77, 7 FCC Red 3027 (1991) (Notice). MCI first proposed restriction of proprietary IXC cards with 0+ access in CC Docket 91-35. In April, 1991, MCI had proposed that the Commission should mandate 0+ dialing as being in the "public domain," so that all carriers issuing calling cards with instructions to use 0+ as the access method are required to make available billing and validation for these cards; carriers that wish to issue proprietary cards should be required to establish an 800 or 950 access method. In addition, MCI advocated that the Commission require that any OSP completing a calling card call using 0+ access not, where feasible, charge more than the applicable rates of the carrier issuing the card, so that consumers would not be exposed to unexpectedly high rates. According to MCI, this "0+ public domain" remedy would enhance competition in the operator services market by reducing AT&T's historical advantage as the carrier that enjoys market power in this market segment. In the Matter of Policies and Rules Concerning Operator Service Access and Pay

immediate action in response to the alleged competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access pending our consideration of the costs and benefits of BPP. Consistent with our paramount concern for consumer welfare, and in order to mitigate the competitive problems that result from the use of proprietary IXC calling cards with 0+ access, we will require AT&T to change its current practices by revising its access instructions to card holders. Specifically, we direct AT&T to (1) educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T; (2) to provide clear and accurate access code dialing instructions on every proprietary card issued; and (3) make its 800 access code number easier to use.

2. We believe that a strict customer education program will solve some of the more immediate competitive problems disclosed by the record in this proceeding, and that it can achieve these results without the disadvantages of customer inconvenience and disruption the other proposed interim solutions would likely entail. In addition, we seek further comment on methods for compensating operator service providers who receive 0+ dialed proprietary card calls and transfer those calls to the proprietary card issuers for completion. Adoption of a billed party preference system of carrier selection for public phones may, in the future, obviate the need for these requirements. As an immediate solution, however, our educational requirements should significantly reduce consumer confusion and enhance the ability of callers to easily reach their carrier of choice for away-from-home calling.

## II. BACKGROUND

3. This Order addresses only the use of IXC proprietary calling cards with the "0+" form of access <sup>2</sup> from public phones. <sup>3</sup> As we described in the

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Telephone Compensation, CC Docket 91-35, Comments of MCI, filed April 12, 1991, at 3-4, and Reply Comments of MCI, filed April 26, 1991, at 1-2.

<sup>2</sup> Notice, 7 FCC Rcd at 3028, paras. 5,6. "0+" describes calls such as collect, credit card, and billed to third party for which the caller dials "0" plus the called number to place a call.

<sup>3</sup> We use the term "public phone" to describe telephones made available by aggregators to the public. See 47 U.S.C. § 226(a)(2), 47 C.F.R. § 64.708(b); Notice, 7 FCC Rcd at 3028 n.7. On December 20, 1991, the Competitive Telecommunications Association (CompTel), and nineteen of its member companies, filed a motion in CC Docket 91-115 requesting an interim order that would require American Telephone and Telegraph Company (AT&T) to halt further issuance of proprietary calling cards in the card issuer identifier (CIID) format and authorize all IXCs to validate and bill AT&T's CIID cards until the Commission released a final decision in the docket. On December 27, 1991, the Commission established a pleading cycle for comments regarding the CompTel Motion. Public Notice, 7 FCC Rcd 119 (1991). The Commission released a Report and Order and Request for Supplemental Comment in CC Docket 91-115, establishing requirements for certain local exchange carrier (LEC) card practices, without ruling on the CompTel Motion in Docket 91-115. Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for

Notice, public phone lines are presubscribed to a particular IXC or operator service provider (OSP)<sup>4</sup> chosen by the premises owner, aggregator or payphone provider, so that all 0+ interLATA calls originating from that line are routed to that carrier. If the caller wants to charge the call to the card of an IXC who is not the presubscribed IXC, either (1) the caller must "dial around" using an access code<sup>5</sup> for the card issuer, or (2) if the caller dials 0+, thereby reaching the presubscribed carrier, the card issuer must open its card validation database to that carrier. Most IXCs have issued "proprietary" cards whose validation databases are not open to competing IXCs.

4. AT&T began issuing proprietary cards using the card issuer identifier (CIID) numbering format February, 1991, in anticipation of the termination of its transitional post-divestiture obligations to continue sharing with the Bell Operating Companies (BOCs) various calling card issuance, maintenance, and validation systems. The AT&T CIID card was specifically intended to replace AT&T's former Bell System "joint use cards."<sup>6</sup>

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Supplemental Comment, CC Docket 91-115, 7 FCC Rcd 3528 (1991) (LEC Card Practices Order). The Commission noted that the rule changes advocated in the CompTel Motion concerned the card practices of IXCs, were beyond the scope of Docket 91-115, and would be considered in a separate rulemaking established concurrently to examine IXC card practices. Id. at 3540 n.139. The Notice in this docket incorporated the CompTel Motion and responsive pleadings into the record. Notice, 7 FCC Rcd at 3033 n.41. A list of all commenting parties in Docket 92-77, other than those filing individual letters, is contained in Appendix A. Comments filed in response to the Notice, will be referred to as "92-77 Comments" and "92-77 Reply Comments," as appropriate. A list of all parties responding to the CompTel Motion in CC Docket 91-115, is contained in Appendix B. We will refer to comments in response to the CompTel Motion in CC Docket 91-115 as "91-115 Comments" or "91-115 Reply Comments," as appropriate. We also take note of numerous individual letters filed on behalf of state agencies. These letters specifically comment on the 0+ public domain remedy contained in the Notice, and have been included in the record in this Docket.

<sup>4</sup> The term "OSP" describes both network-based IXCs that provide operator services, and IXCs that offer their own operator service functionalities while procuring transmission capabilities from other carriers.

<sup>5</sup> An access code is a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence. 47 U.S.C. § 226(a)(1); 47 C.F.R. § 64.708(a). 950- and 1-800 are access code prefixes which all OSPs are currently required to provide. "Equal access codes" use the 10XXX sequence, which allows the public to obtain an equal access connection to the carrier associated with that code. See 47 U.S.C. § 226(a)(6); 47 C.F.R. § 64.708(f); Policies and Rules Concerning Operator Services and Pay Telephone Compensation, Order on Reconsideration, 7 FCC Rcd 4355 (1992).

<sup>6</sup> The CIID format utilizes a six-digit card issuer identification number, assigned by Bell Communications Research, Inc. (Bellcore), acting as administrator of the North American Numbering Plan, plus a four-digit account

AT&T established independent CIID card systems to implement this separation of the formerly shared card systems. Similarly, the BOCs established new and separate card validation databases for their joint use cards, the line identification databases (LIDBs). Pursuant to Court and Commission Orders, the LECs must offer their joint use card validation service on non-discriminatory terms, under tariff to all IXCs.<sup>7</sup> AT&T has stated that issuance of its proprietary CIID card ended the anomalous situation whereby the AT&T joint use card could be validated (through access to the jointly-maintained AT&T/BOC card account database) by its competitors, and put the AT&T card on equal footing with the proprietary calling cards of its principal IXC competitors, whose cards cannot be used to charge calls on another IXC's network.<sup>8</sup>

5. All of AT&T's proprietary CIID cards carry dialing instructions on the back of the card which direct the caller to first dial "0" plus the called number. The card further directs the caller, if he or she does not hear the AT&T brand after the "bong" tone, to hang up and attempt to reach AT&T by dialing its 10XXX equal access code, 10288, plus the called number. AT&T's customer service 800 number is also provided separate from the dialing

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number and a four-digit personal identification number (PIN) assigned by the card issuer. The six-digit CIID number allows other carriers to identify the IXC who issued the card, and, where permitted, to send a validation query to that IXC's validation database. The CIID format is available only to card-issuing IXCs. The CIID plan was developed by the BOCs to enable all IXCs to issue 14-digit calling cards in a format which the BOCs could recognize and validate for intraLATA 0+ calls. See LEC Card Practices Order, 7 FCC Rcd at 3541.

<sup>7</sup> See LEC Card Practice Order, 7 FCC Rcd at 3529; Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Notice of Proposed Rule Making, 6 FCC Rcd 3501, 3506 n.1 (1991). A "LEC joint use card" is defined as one which bears an account number assigned by a LEC, is used for services of the LEC and a designated IXC, and is validated by access to data maintained by the LEC. An "IXC joint use card" bears an account number supplied by an IXC, is used for the services of the IXC and a designated LEC, and is validated by access to data maintained by the IXC. LEC joint use card account numbers are based on either the subscriber's line number or a Revenue Accounting Office (RAO) number. RAO is a non-line numbering system originally created before the AT&T divestiture. LEC Card Practice Order, 7 FCC Rcd at 3529 n.2. Both the AT&T and BOC joint use cards were in a 14-digit telephone line number or RAO format; the account and PIN numbers were shared so that a customer might have both an AT&T and a BOC joint use card bearing the identical account number. In the LEC Card Practices Order, we required all LECs to establish non-discriminatory means of access to validation data for their joint use cards in accordance with Title II of the Communications Act. The BOCs, pursuant to their Modification Of Final Judgement (MFJ) obligations, were also required to make available to all IXCs requesting it, the validation data for their joint use calling cards. See United States v. Western Electric Company, 739 F. Supp. 1 (D.D.C. 1990); United States v. Western Electric Company, 698 F. Supp. 348 (D.D.C. 1988).

<sup>8</sup> See 91-115 AT&T Opposition at 8-10.

instructions. The 800 number can also be used to connect the caller to the AT&T network, but first the caller must negotiate a menu of other service options. In addition, AT&T provides mailing inserts with each new card bearing the same dialing instructions. These dialing instructions permit a call to be completed as dialed on the first attempt only at public phones presubscribed to AT&T. When the line is presubscribed to another OSP, that OSP is not permitted to access AT&T's CIID card validation database, and therefore, as a practical matter, cannot complete the call as dialed or bill the caller for any call processing costs incurred. As we stated in the Notice, the OSPs claim that customers often become angry at the OSP who is unable to complete their calls. AT&T's competitors also claim that AT&T uses this customer frustration in its marketing efforts to get premises owners and aggregators to presubscribe their aggregator lines to AT&T. In turn, AT&T uses its success in the presubscription market to attract card customers who prefer the convenience of 0+ dialing.<sup>9</sup>

6. We observed, in the Notice, that as AT&T increasingly moves its customers to proprietary calling cards that other OSPs cannot validate, the disparity between the relative amounts of commissionable traffic that AT&T and other OSPs can handle may grow larger. Consequently, premises owners and aggregators will face growing incentives to presubscribe their public phones to AT&T, thereby increasing AT&T's competitive advantage with respect to 0+ calling. BPP could reduce this disparity by giving every IXC the same opportunity to offer interested customers 0+ card dialing. Yet, as we noted, BPP can not be implemented immediately.<sup>10</sup> Some of AT&T's competitors have urged the Commission to take immediate action to deny AT&T the ability to derive any competitive advantage from its proprietary card usable with 0+ access.

7. In the Notice, we sought separate comment, in an expedited pleading cycle, on proposals from AT&T's competitors to restrict the use of proprietary calling cards for 0+ calling. We particularly sought comment on the proposal that we require all IXCs to either share with other IXCs the billing and validation data for any calling card using 0+ access, or require IXCs to instruct proprietary cardholders to dial access codes, as an interim remedy pending consideration of BPP.<sup>11</sup> Sharing the data would permit the presubscribed carrier to accept a caller's card even if issued by a different carrier, and would enable customers to complete card calls from any telephone. The proposal has been called "0+ public domain" because, according to its proponents, the proposal effectively requires validation and billing data for proprietary IXC cards usable with 0+ access to be put in the "public domain." In contrast, IXCs wishing to retain the proprietary nature of their cards would have to restrict their cardholders to using access codes to reach their networks, even at telephones presubscribed to the card issuer. We sought more specific information and comment on 0+ public domain from its proponents,

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<sup>9</sup> Notice, 7 FCC Rcd at 3033, paras. 39-40 & n.42.

<sup>10</sup> Notice, 7 FCC Rcd at 3030, paras. 20-21, 3033 at paras. 39-41.

<sup>11</sup> Notice, 7 FCC Rcd at 3033-34, paras. 36, 42-43.

including how, specifically, 0+ public domain would be implemented and would work.<sup>12</sup>

### III. DISCUSSION

#### A. Marketplace Characteristics of Calling Card Service

8. Proponents of Commission intervention in calling card services have alleged that, under current marketplace structures, competitive problems result from AT&T's introduction of a proprietary 0+ calling card. The threshold determination we must make in this phase of the docket is whether interim relief, in the form of "0+ public domain" or some other remedy, is required to remedy such problems pending action on the billed party preference proposal.

##### 1. Positions of the Parties

9. Unfair advantage in operator services. AT&T's competitors maintain that the combination of AT&T's card market share and public phone presubscription share confers three competitive advantages on AT&T. First, AT&T's competitors argue that AT&T's introduction of a card that is both 0+ and proprietary imposes an undue competitive disadvantage on them because it significantly increases their costs of doing business, while simultaneously decreasing their revenues.<sup>13</sup> By instructing its cardholders to initially dial using 0+ access, AT&T ensures that its customers will first reach the presubscribed carrier for the public phone who cannot bill the call to AT&T's card. The OSPs claim these call attempts cause them to incur local access charges, validation fees,<sup>14</sup> and live operator holding time for calls that they cannot complete and for which they cannot receive compensation from the cost

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<sup>12</sup> Notice, 7 FCC Rcd at 3034, para. 43.

<sup>13</sup> See e.g., 91-115 CompTel Motion at 4-5, 16-19 (over 50% of calls from some locations cannot be completed as dialed due to AT&T's decision to keep its database proprietary); 91-115 ITI Comments at 6-7 and Reply Comments at 4-7; 91-115 Joint Commenters Comments at 6-9 and Attachments A-D (as of 1/1/92, some OSPs were recording 25-40% unbillable call attempts involving AT&T CIID cards); 91-115 Integretel Comments at 4-5 and Attachments A&B (25-64 percent of 0+ traffic at various locations is AT&T CIID card traffic); 91-115 United/Sprint Comments at 1; 92-77 Sprint Comments at 1-4; 92-77 ITI Comments at 17; 92-77 ATC Comments at 3-5; 92-77 Phonetel Comments at 4-6.

<sup>14</sup> CompTel argues that OSPs incur validation costs because the AT&T CIID card is a 14-digit card like the universally accessible LEC joint use card. CompTel argues that OSPs cannot distinguish the two, and thus, must first attempt to validate the card number in a LIDB database. The inability to validate automatically notifies an operator to intervene to ascertain the problem. If the caller chooses not to use another billing mechanism, which is often the case, the OSP cannot recover the associated validation fee, local access charges and operator costs. 91-115 CompTel Motion at 17-18.

causer. <sup>15</sup>

10. Second, they claim that AT&T, and only AT&T, can offer a proprietary card that is usable with 0+ access on a near-universal basis. <sup>16</sup> AT&T's competitors' estimate AT&T's share of public phone presubscribed lines to be between 75 and 80 percent. <sup>17</sup> Sprint maintains that this share means AT&T's cardholders can reach AT&T at roughly four out of every five phones in the nation. <sup>18</sup> Therefore Sprint asserts, as a practical matter, only AT&T can offer a 0+ card that works at most phones. Currently, no other IXC has a presubscription share of appreciably more than ten percent and their customers would have to use an access code for roughly nine out of ten interLATA calls. For customers of other IXCs to use 0+ dialing, they would have to ascertain whether the call is intraLATA or interLATA, and if it is an interLATA call, whether the phone is presubscribed to their preferred carrier. For Sprint, MCI and smaller IXCs to attempt to educate their customers on this complicated process to determine when they should dial 0+ and when they should instead use an access code, would not be a realistic option. Sprint argues that its and AT&T's other competitors' inability to issue such universally usable cards places them at a disadvantage in competing for card customers because their cardholders must dial extra digits to place interLATA calls. <sup>19</sup>

11. Finally, AT&T's competitors argue that AT&T's 0+ CIID card will allow AT&T to increase its share of public phone presubscriptions in the future. Because the CIID card is proprietary, argue these carriers, no presubscribed carrier other than AT&T can handle the 0+ calls made with the card. AT&T's competitors argue that, to retain those calls, which make up the bulk of the public phone traffic that generates commissions, aggregators and premises owners will select AT&T as their presubscribed carrier. The more presubscription locations AT&T gains, the more universally usable its card becomes, thus attracting more card customers. AT&T's competitors argue that this synergistic effect creates inequities in the competition for both card

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<sup>15</sup> See, e.g., 91-115 Joint Commenters Comments at 2-3; Attachments A-D; 92-77 CNS Comments at 7; 92-77 ITI Comments at 5; 92-77 CompTel Comments at 4.

<sup>16</sup> See, e.g., 92-77 MCI Comments at 1-2; 92-77 CompTel Comments at 2; 92-77 ITI Comments at 19.

<sup>17</sup> See Notice, 7 FCC Rcd at 3030 n.25, citing CompTel and ITI Supplemental Comments at 3, filed November 22, 1991, on Bell Atlantic Petition for Rulemaking to Establish Uniform Dialing Plan From Pay Telephones, RM-6723, April 13, 1989; 92-77 Sprint Comments at 2.

<sup>18</sup> 92-77 Sprint Comments at 1-4. For the same reasons, Sprint argues, the CIID format, which was developed by Bell Communications Research, Inc. (Bellcore) to permit all IXCs to issue 0+ cards usable for both inter- and intraLATA calls, is useful only to AT&T. See 91-115 United/Sprint Comments at 1-2 and Reply Comments at 2-3.

<sup>19</sup> See 91-115 United/Sprint Comments at 1-2 and Reply Comments at 2-3.



customers and payphone presubscriptions. 20

12. AT&T disputes its competitors' claims that there is a market problem with respect to IXC cards, public phone presubscriptions and the provision of operator services in general. AT&T argues that its CIID cards are in the public interest and satisfy its customers' needs.

13. As to the card market, AT&T argues that the new proprietary card simply puts AT&T on an equal footing with its principal IXC competitors, who issue proprietary cards. According to AT&T, IXC competition for calling card business is intense. AT&T states that its share of the industry's interstate card minutes was a steady 64 percent for the fourth quarter of 1991 through the second quarter of 1992. 21 AT&T also notes that MCI and Sprint, together, have issued over 32 million proprietary cards --as compared to AT&T's 25 million CIID cards. In addition to these cards, there are over 50 million non-proprietary 0+ LEC cards, substantially more than there were a few years ago. According to AT&T, its new CIID cards represent less than one-fourth of all telephone calling cards in circulation. AT&T maintains that this wide array of choices has put downward pressure on AT&T's calling card market share, and forecloses any basis for concern about "remonopolization" by AT&T. 22 Keeping its CIID card database proprietary responds to the demands of thousands of AT&T cardholders who were confused when their non-proprietary AT&T/LEC joint use cards were accepted by unknown (or poorly identified) OSPs, often at rates that were several times higher than the AT&T rates they had expected. AT&T argues that its customers want a proprietary AT&T card so that they can be assured of receiving AT&T service and rates. ITI itself has stated that three out of four AT&T cardholders who reach ITI on a 0+ basis choose not to provide an alternative billing mechanism, which, AT&T argues, indicates a desire not to have OSPs complete their calls. 23

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20 See, e.g., 92-77 Sprint Comments at 1-4; 92-77 MCI Comments at 1-3; 92-77 ITI Comments at 6, 17-20; 92-77 CompTel Comments at 4-5.

21 See Ex Parte Letters filed September 24 and 30, 1992 in Docket 92-77, by Robert H. Castellano, AT&T. Of the 64 percent, 35 percent were charged to the AT&T CIID card, and 29 percent were charged to LEC joint use cards. AT&T's share of interstate card minutes is very close to its share of total interstate minutes for the same period, which is 63 percent.

22 91-115 AT&T Opposition at 13 n.\*\*, citing The Nilson Report, June 1991, p.1; 92-77 AT&T Reply Comments at ii, 12-13.

23 91-115 AT&T Opposition at 10 n.\*; 92-77 AT&T Comments at 4 and Reply Comments at 11 n.\*; citing 91-115 ITI Comments at 7. AT&T notes that Sprint recently introduced a new telephone line number (TLN)-based proprietary card which can be used on a 0+ basis from Sprint-presubscribed phones, and with 10333 access from other phones. Other IXCs, like MCI, have chosen a TLN-based format but have decided not to make card calling available on a 0+ or 10XXX basis. AT&T asserts that both 0+ and 10222 calls dialed with MCI's card from an MCI-presubscribed phone are delivered by the LECs to MCI, but that MCI has chosen to reject these calls within its own network for its own business

14. According to AT&T, only 68 percent of public phone lines are presubscribed to AT&T, and of those, less than 40 percent are under contract whereby the premises owner or aggregator receives commission payments on 0+ traffic carried by AT&T.<sup>24</sup> AT&T argues that its advantage in public phone presubscriptions is due to its superior product. Many OSPs, in contrast, have chosen to invest virtually nothing in making their services attractive to end users, and, AT&T asserts, seek to compete by creating and preserving arrangements that trap unwary consumers.<sup>25</sup>

15. Finally, AT&T states that the OSPs' own claims of injury are exaggerated. CIID codes are unique codes that are publicly assigned by Bellcore to specific carriers. Thus, any OSP presented with a CIID card can know that the card number cannot be validated in a LEC's system after only 6 digits are entered by the caller, so that there is no need to make any validation query at all.<sup>26</sup> In addition, any effort an OSP makes to get a caller to use a different billing method so that the OSP can handle the call on its own network, is entirely voluntary and within its control. Its competitors can continue to provide operator services by using the millions of 0+ LEC joint use cards that are in the "public domain," by arranging to accept bank credit cards, and by investing in their own cards.<sup>27</sup>

16. AT&T defends its dialing instructions by stating that from most public phones, customers can reach AT&T on a 0+ basis. Where they cannot, AT&T informs them to use an alternate dialing sequence specified in the Commission's equal access rules. AT&T maintains that it has heavily promoted its 10288 access code, so that customers know how to reach AT&T when they see or hear that 0+ access is not available. It argues these instructions are consistent

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purposes. Still others have chosen not to issue cards at all, but merely to accept LEC joint use cards, whose database must be open to all IXCs by Commission and Court order. AT&T argues this range of customer choice is precisely what a competitive business like the provision of long distance calling card service is designed to foster. 92-77 AT&T Comments at 6-7. Sprint explains that although its card is usable on a 0+ basis, it instructs its cardholders to always dial an access code because if Sprint cardholders tried to dial 0+ they would reach the wrong carrier from at least nine out of ten public phones. Thus, AT&T's proprietary cardholders enjoy a dialing convenience that no other carrier can match. 92-77 Sprint Comments at 2.

<sup>24</sup> See Ex Parte Letter filed September 24, 1992, in Docket 92-77, by Robert H. Castellano, AT&T.

<sup>25</sup> 92-77 AT&T Comments at 6-7 and Reply Comments at 14.

<sup>26</sup> SWBT also notes that AT&T's competitors can purchase two Bellcore products that provide the information required to identify CIID codes before launching a validation query to the LECs. 91-115 SWBT Comments at 4.

<sup>27</sup> 91-115 AT&T Opposition at 7 n.\*\*, 14-15.

with the Commission's most recent report on the implementation of signage and branding,<sup>28</sup> which shows that audible branding is substantially more reliable in identifying the OSP than the signs at aggregator locations.<sup>29</sup> Thus, AT&T's instruction to its customers to dial 0+ "and hang up if you don't hear AT&T" is one of the most effective and most easily understood ways to tell customers how they can ensure themselves that they reach AT&T.<sup>30</sup>

17. Unfair Card Marketing Practices. AT&T's competitors claim that AT&T's undue competitive advantage in the provision of operator services and calling cards has been exacerbated by AT&T's aggressive marketing campaign for payphone presubscriptions. These OSPs state that AT&T has relied on the proprietary nature of its CIID card and its high share of 0+ traffic to convince aggregators that they will lose money and customer good will if they presubscribe to other carriers.<sup>31</sup> AT&T's competitors argue that AT&T's CIID marketing strategy has been winning back aggregators served by competitors. Some aggregators have specifically cited AT&T's representations regarding the restricted use of CIID cards as a major reason for changing their presubscribed carrier to AT&T.<sup>32</sup>

18. AT&T's competitors further contend that AT&T has engaged in a misleading marketing effort aimed at getting its end users to destroy their universally accepted LEC joint use cards and to accept the AT&T CIID card. According to CompTel, AT&T recognizing that its own marketing studies show that customers perceive the CIID card to be somewhat more difficult and cumbersome to use than a line based calling card, told its customers that the change to

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<sup>28</sup> "Signage" refers to the requirement that aggregators post on or near the telephone instrument, inter alia, the name, address and toll-free telephone number of the provider of operator services. 47 U.S.C. § 226 (c)(1)(A)(i); 47 C.F.R. § 64.703(b). "Branding" refers to the requirement that an OSP, inter alia, identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call; for an interim period, OSPs are required to "double brand," or identify themselves twice before connecting and charging the consumer for the call. 47 U.S.C. § 226(b)(1) and (2); 47 C.F.R. § 64.703(c).

<sup>29</sup> 92-77 AT&T Reply at 15 & n.\*\*\*\*, citing Interim Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, dated November 14, 1991, at 16-17.

<sup>30</sup> 91-115 AT&T Opposition at 19-20 and Reply Comments at 6; 92-77 AT&T Reply Comments at 15-16.

<sup>31</sup> See e.g., 92-77 ITI Comments at 18-19; 91-115 CompTel Motion at 8. Ex Parte Letter in Docket 91-115 dated March 3, 1992, to Hon. Alfred C. Sikes from George Vasilikos, Com Systems.

<sup>32</sup> See 91-115 CompTel Motion at 16, citing Joint Comments of Metromedia Communications Corporation and Metromedia Hotelnet, Inc. at 6, CC Docket 91-115, filed August 15, 1991; 92-77 ComTel Comments at 3-4.

the CIID format was necessary in order to comply with government requirements.<sup>33</sup> NYNEX submits that AT&T's questionable card marketing approach will cause former joint use card holders to abandon their universally accepted card, and result in more premises owners presubscribing their public telephone lines to AT&T to retain sufficient commissionable traffic.<sup>34</sup>

19. AT&T maintains that its marketing messages to both end users and aggregators are both factually correct and completely unrelated to the proposal before the Commission to declare that 0+ dialing should be in the public domain. AT&T disputes the LECs' claims that it misled their joint use card customers through its CIID card replacement program. AT&T argues that its instruction to AT&T joint use cardholders to destroy their old AT&T cards was issued in accordance with Federal Reserve Board requirements under Regulation Z, 12 C.F.R. § 226.12(a). AT&T maintains that any related misunderstandings may be the result of differing interpretations of these requirements by the BOCs. AT&T states that it has nonetheless investigated the incidents referenced by some LECs in their comments on CompTel's Motion and found those reports to be incorrect or misleading.<sup>35</sup> Furthermore, AT&T states that only about one-third of its 25 million CIID cards were issued in its card replacement program. The remaining two-thirds were issued in response to customers' direct requests.<sup>36</sup>

## 2. Discussion

20. The record confirms the observation we made in the Notice that the disparity between the relative amounts of commissionable 0+ traffic that AT&T and other OSPs can handle may grow larger as AT&T increasingly migrates customers to proprietary cards that other OSPs cannot validate.<sup>37</sup> The record does indicate that to retain the commissions associated with those calls, some aggregators have announced that they are terminating their arrangements with other OSPs and subscribing their lines to AT&T at least in part because of the

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<sup>33</sup> 91-115 CompTel Motion at 5-6, quoting Reply of AT&T Co., AT&T Communications Revisions to Tariff F.C.C. No.1, Transmittal No. 2902, at 5-6, filed March 11, 1991, and citing Letter from Sharon L. Park, Manager, AT&T Calling Card to unidentified customer, appended as Attachment C.

<sup>34</sup> 91-115 NYNEX Comments at 1-2. In their comments on CompTel's Motion, several other LECs also complained of AT&T's CIID card marketing practices. See 91-115 SWBT Comments at 6-7; 91-115 Comments Bell Atlantic at 1-2; 91-115 Pacific Comments at 2; 91-115 Ameritech Comments at 2-3. See also 91-115 ITI Comments at 8; 91-115 CompTel Motion at 5-6, 10.

<sup>35</sup> 91-115 AT&T Reply Comments at 6-7; 92-77 AT&T Reply Comments at 15 n.\*.

<sup>36</sup> 92-77 AT&T Reply Comments at 13 n.\*; 91-115 AT&T Reply Comments at 2 n.\*\*.

<sup>37</sup> Notice, 7 FCC Rcd at 3030, paras. 20-21, 3033 at paras. 39-40.

replacement of the AT&T joint use card with the AT&T CIID card.<sup>38</sup> As we observed in the Notice, AT&T appears to enjoy an advantage in the presubscription of public phones because AT&T has the largest number of customers placing 0+ calls.<sup>39</sup> AT&T's share of presubscribed public phone lines, however, means that, as a practical matter, only AT&T is able to issue a proprietary card that is usable with 0+ access at a sufficient number of public phones to make its card marketable and workable as a 0+ proprietary card. These advantages, however, do not necessarily require immediate regulatory intervention. As we explain below, the costs of the interim solutions proposed in this proceeding outweigh the benefits. Moreover, we note that we are considering billed party preference as a possible long term solution. In addition, our orders requiring the phased-in unblocking of 10XXX equal access codes at aggregator locations will ultimately decrease the competitive importance of the number of presubscribed locations an IXC has, because all IXC card customers will enjoy roughly the same ability to dial around the presubscribed carrier to reach their carrier of choice. Moreover, while AT&T may have a larger share of public phone presubscriptions than other IXCs, its share is smaller than its competitors claim. Significantly, AT&T pays premises owners and aggregators 0+ traffic commissions for less than 40 percent of its presubscribed locations. It would therefore appear that competition for public phone presubscription is not governed exclusively by the size and amount of commission payments.<sup>40</sup>

21. We also note that customers are choosing from a number of available card options. Of AT&T's 64 percent share of interstate minutes, 35 percent was charged to its CIID card and 29 percent charged to LEC joint use cards. According to AT&T, Sprint and MCI together have issued nearly 7 million more proprietary cards than has AT&T. Although AT&T may have the single largest IXC card base, its CIID cards account for less than twenty-five percent

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<sup>38</sup> See, e.g., 91-115 CompTel Motion at 8, 16; 91-115 Joint Commenters Comments at 2-3 and Attachments A-D; 91-115 ComTel Comments at 2-3 and 92-77 ComTel Comments at 3-4. The record also indicates that AT&T's OSP competitors are losing billable 0+ traffic to the AT&T CIID card of anywhere between 25 and 50 percent over previous levels. Id. However, it is not clear from the record whether the 0+ traffic loss figures presented by AT&T's OSP competitors represents traffic lost because AT&T's CIID cardholders are dialing 0+ and the OSPs cannot validate the cards, or because AT&T cardholders are placing their calls using AT&T's dial around access code. AT&T's competitors have no legitimate complaint about customers exercising their right to reach their carrier of choice through access code dialing. Protecting this right of consumer choice of carrier is at the very heart of this Commission and Congress' most recent actions in the operator services area.

<sup>39</sup> Notice, 7 FCC Red at 3033, para. 20.

<sup>40</sup> Compare Notice, 7 FCC Red at 3030 n.25 (CompTel estimates AT&T's share of public phone lines to be 75 percent); 92-77 Sprint Comments at 2 (Sprint estimates the share to be closer to 80 percent) with Ex Parte Letter filed September 24, 1992, by Robert H. Castellano, AT&T (AT&T's share of public phone lines is 68 percent; less than 40 percent are under contract).

of the total number of calling cards (including LEC joint use cards) on the market.<sup>41</sup> As we will discuss in more detail below, the proprietary nature of AT&T's cards is not itself a competitive problem. IXC proprietary cards are one way to serve the important public interest of permitting consumer choice in the presubscription environment.

22. Further, there are measures that OSPs and customers can take to mitigate the problems arising from proprietary cards using 0+ access. For example, the record indicates that there are steps competing OSPs can take to minimize the costs they incur in processing CIID card calls such as avoiding unnecessary validation fees through identification of the CIID codes prior to sending a validation query to the LECs' LIDBs.<sup>42</sup> We also note that proper signage at aggregator locations, audible branding and unblocking of 10XXX access codes at public phones, in accordance with TOCSIA and our rules and regulations thereunder, will enable customers equipped with accurate proprietary card dialing instructions to reach their carrier of choice more easily and without unnecessary imposition on the facilities of competing OSPs.<sup>43</sup>

23. Some parties also raise concerns about AT&T's CIID card marketing messages to its customers, and about its marketing messages to aggregators and premises owners. Their real concern appears to be not with the marketing messages themselves, however, but rather with the underlying market conditions that give rise to those messages. We address those underlying conditions, and proposed solutions, in this order and in Phase 2 of this docket. We are also addressing elsewhere the concerns raised by AT&T's marketing messages to its customers.<sup>44</sup>

24. Furthermore, AT&T's policy against allowing its competitors to access its CIID validation database does not prevent a caller from placing a 0+ call and using a different billing mechanism. According to AT&T, there are over 50 million non-proprietary LEC joint use cards in circulation, which may be validated for 0+ calls by all carriers. In addition, calls may be charged on a collect or billed-to-third-party basis, or they may be charged to commercial credit or charge cards, if the OSP makes appropriate arrangements with the card issuers. Finally, OSPs may issue their own calling cards.

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<sup>41</sup> See Ex Parte Letter filed September 24, 1992, in Docket 92-77, by Robert H. Castellano, AT&T; 92-77 AT&T Reply Comments at ii.

<sup>42</sup> See 91-115 SWBT Comments at 4; 91-115 AT&T Reply Comments at 6 n.\*\*.

<sup>43</sup> Our 1991 TOCSIA Report to Congress indicated a problem with aggregator compliance with the signage requirements. See Interim Report of the Federal Communications Commission Pursuant to the Telephone Operator Services Improvement Act of 1990, at 15. The data from our 1992 survey of compliance shows continual improvement in industry compliance. The full survey will be released to the public as part of our report to Congress on TOCSIA in November, 1992.

<sup>44</sup> See Letter adopted November 3, 1992, By Direction of the Commission, FCC 92-490.

25. Nevertheless, we do find that an immediate competitive problem has been created by AT&T's CIID card dialing instructions. This problem cannot be eliminated unilaterally by AT&T's competitors. Because AT&T instructs its cardholders to dial 0 plus the receiving number, without first ascertaining whether AT&T is the presubscribed carrier for that line, its competitors are forced to devote their facilities to uncompleteable and therefore unbillable CIID card calls. Thus, the costs incurred in processing such calls cannot be recovered from those causing the costs to be incurred.<sup>45</sup> Customers are understandably frustrated when their calls, placed in accordance with the dialing instructions AT&T provides for its CIID cards, cannot be completed as dialed. AT&T's competitors' inability to process CIID card calls has caused this customer frustration to be misdirected at the OSP. It then may be communicated to the aggregators, and result in a loss of customer good will for the OSP.

**B. The 0+ Public Domain Proposal: Definition and Operation**

26. 0+ public domain was originally proposed by AT&T's competitors as an interim remedy for the market problems described in the Notice and discussed in Section III.A, supra. It was to be a conditional remedy that would give IXC card issuers a choice: either establish and use access codes for proprietary cards, or use 0+ access and open the card validation and billing database to all other IXCs.

27. A key issue regarding the 0+ public domain proposal is whether we should include a requirement prohibiting the card issuer from accepting 0+ calls that are made with proprietary cards, as a means of enforcing the card issuer's dialing instructions. If the card issuer is permitted to complete such a call, despite the cardholder's failure to use an access code, its customers may continue to use 0+ indiscriminately, thus undermining the effectiveness of the 0+ public domain remedy. Accordingly, the Notice sought comment on whether card issuers should be required to reject proprietary card calls when cardholders mistakenly use 0+ access.<sup>46</sup> We will address this issue first, because it raises a set of operational issues distinct from those raised by 0+ public domain in general.

**1. 0+ Call Rejection for Proprietary Cards**

**a. Positions of the Parties.**

28. AT&T strongly opposes any requirement that would prohibit AT&T from accepting the 0+ calls of its CIID cardholders placed from lines presubscribed to AT&T. AT&T argues that a proposal that permits 10XXX calls on such lines but not 0+ calls is technologically unworkable. According to

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<sup>45</sup> The potentially unrecoverable expenses include local access charges, live operator expenses and, in some cases, card validation fees. See 91-115 CompTel Emergency Motion at 17.

<sup>46</sup> Notice, 7 FCC Rcd at 3034, para. 43.

AT&T, IXC's cannot differentiate between incoming 0+ and 10XXX calls because, under existing technical arrangements, LEC's do not pass information to IXC's that would enable them to determine whether calls reaching their networks have been dialed on a 0+ or 10XXX basis.<sup>47</sup> Thus, AT&T would not be able to reject only 0+ calls unless its operators were to intervene on every calling card call and ask customers which dialing method was used to place the call. This would seriously inconvenience callers. Moreover, AT&T argues that even if technical arrangements could be worked out, this requirement would still subject AT&T's customers to the pointless inconvenience of having to hang up and redial to reach its network.<sup>48</sup>

29. The alternative, requiring IXC's to give up both 0+ and 10XXX access in order to keep their cards proprietary, was criticized by both AT&T and Sprint. They argue that it would be a major regression, and completely counterproductive, to force IXC's to abandon 10XXX access, given the Commission's earlier finding in CC Docket 91-35 that 10XXX access is more convenient and desirable than 800 or 950 access codes. Moreover, Sprint claims it recently invested a considerable sum to establish 10XXX access for its card in order to compete effectively with the AT&T card.<sup>49</sup>

30. In contrast, supporters of 0+ call rejection maintain that all carriers, and most particularly, the card issuer, must be required to reject 0+ calls charged to proprietary calling cards in order to reinforce the new dialing instructions and ensure that callers consistently use the proper form of access for their cards.<sup>50</sup> Some OSP's acknowledge that it will, consequently, be necessary to eliminate 10XXX access for use with CIID cards, thus limiting AT&T to using 800 or 950 code access. However, they argue that unless rejection is required, callers will continue to use 0+ access at non-AT&T phones, and AT&T's competitors will continue to receive CIID card calls at

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<sup>47</sup> Although the Signaling System 7 (SS7) protocol may provide such information, it will take several years for LEC's to deploy that capability and IXC's to modify their operator systems to function with it. USTA and several LEC's note that LEC's and IXC's could reconfigure their networks to block all 0+ traffic at the end office or isolate 0+ traffic on dedicated trunks to the IXC's so that the IXC's could block such traffic. Such a reconfiguration would take time to execute and would require costly and inefficient facility deployment that would be obsolete if BPP is deployed. The LEC's maintain that this is not a viable interim solution. See 92-77 GTE Comments at 2-3; accord 92-77 SWBT Comments at 6-7; Ameritech Comments at 3; NYNEX Comments at 3; US West Comments at 6-7; USTA Comments at 3.

<sup>48</sup> 91-115 AT&T Opposition at 17 n.\*\*; 92-77 AT&T Comments at 8-9 & n.\*.

<sup>49</sup> 92-77 Sprint Comments at 9; 92-77 AT&T Reply Comments at 8 n.\*\*; citing Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Red 4736, 4739, para. 10 n.36 (1991).

<sup>50</sup> 92-77 MCI Comments at 4; 92-77 ComTel Comments at 5; 92-77 CNS Comments at 11; 92-77 CompTel Comments at 13; 92-77 ATC Comments at 6-7; 92-77 ZPDI Comments at 8-10 and Reply Comments at 2.



their locations, and incur the expenses associated with these calls. <sup>51</sup>

**b. Discussion**

31. It is clear from the record that IXC's do not currently receive the information necessary to determine if a proprietary card call was placed by dialing 0+ or 10XXX on an automated basis. Full SS7 facilities deployment and the operator system modifications necessary to enable IXC's to obtain this information will not be available in the near term. Without full deployment of SS7 signaling, AT&T could intervene on all calling card calls originated from phones presubscribed to it and ask customers the dialing method used to make the calls. Or, the LECs could segregate 0+ from 10XXX-dialed calls before sending the traffic to the IXC's. These approaches would either take several years to implement or could be implemented on an expedited basis with significantly higher costs for IXC's, and thus for consumers, or both. A remedy which would take several years to implement cannot provide an immediate, short term solution to these issues pending our consideration of BPP.

32. Furthermore, IXC abandonment of 10XXX access codes for proprietary card calls is clearly not in the public interest. We recently recognized the superiority of 10XXX as compared with 800 and 950 access, and ordered the unblocking of 10XXX codes at payphone and aggregator locations according to a prescribed schedule. We found that the 10XXX access method is an efficient dialing sequence that has met with a high degree of consumer acceptance, and that consumers should be free to utilize that sequence if they wish. <sup>52</sup> We will not now take any action which would deprive end users of this clearly superior form of access.

33. Accordingly, we address below the public interest costs and benefits of a 0+ public domain remedy that does not include 0+ call rejection by the card issuer.

**2. Public Interest Benefits and Costs of 0+ Public Domain**

**a. Positions of the Parties**

34. Benefits. Most of AT&T's OSP competitors, the private payphone providers, billing and collection clearinghouses, and several LECs, support the proposal to reserve 0+ access for calling cards with open validation databases and to mandate proprietary access code dialing for use with proprietary calling cards. Proponents of 0+ public domain submit that its adoption is essential

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<sup>51</sup> 92-77 CNS Comments at 11 and Reply Comments at 9; 92-77; CompTel Reply Comments at 11-12; 92-77 ATC Comments at 6.

<sup>52</sup> See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket 91-35, Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736 (1991) at para 10; Order on Reconsideration, 7 FCC Rcd 4355 (1992) at para 10 (affirming threshold determination that 10XXX is an efficient form of access that consumers should be able to use when choosing their preferred OSPs).

to preserve the competitive market for operator services. They argue that 0+ public domain will eliminate the current frustration and confusion of consumers who discover that their cards are usable at some locations but not at many others. Accordingly, they argue that proprietary cards should be used only with access code calling, and that an IXC should be given the option of retaining a proprietary card database by instructing cardholders to use access codes. <sup>53</sup>

35. MCI and others argue that consumers thus would benefit from higher call completion rates, and competitors would no longer be burdened with the costs of uncompleteable calls, <sup>54</sup> and competition among operator service providers would no longer be impeded by AT&T's advantage as the sole provider of cards usable with 0+ access. <sup>55</sup> CompTel and ITI also argue that 0+ public domain is fully consistent with the terms and objectives of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), 47 U.S.C. § 226, <sup>56</sup> and the Commission's rules and regulations adopted thereunder. These provisions are designed to ensure maximum consumer choice in the presubscription environment by requiring aggregators and OSPs to provide notice of the identity of the presubscribed carrier through posting and branding and by prohibiting blocking of access codes to reach competing carriers. <sup>57</sup>

36. Phonetel argues that access to multiple carriers will stimulate price as well as service competition and increase network and service redundancy in the event of service outages or other disruptions on the card issuer's network. A proprietary card usable only on one carrier's network leaves the card holder far more vulnerable to loss of service when that carrier

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<sup>53</sup> 92-77 MCI Comments at 1-4; 92-77 LDDS Comments at 2,7; 92-77 Phonetel Comments at 10-11; 92-77 USLD Comments at 1, 5-9; 92-77 ATC Comments at 1-2; 92-77 CNS Comments at 7-9; 92-77 ClearTel/Com Systems Comments at 6 and Reply Comments at 3-6; 92-77 CompTel Comments at 1-4, 12; 92-77 ComTel Comments at 2-4; 92-77 ITI Comments at 20-23; 92-77 VAC Comments at 5-6; 92-77 NPPA Comments at 2-3, 7; 92-77 ZPDI Comments at 4-7; see also 91-115 Centel Comments at 2-3 (0+ access for non-proprietary cards); 92-77 Pacific Comments at 1-2; 92-77 APCC Comments at 16; 92-77 USTA Comments at 8; 92-77 US West Comments at 5.

<sup>54</sup> NPPA argues that, once the costs of uncompleteable calls are eliminated, consumers will benefit from corresponding rate reductions. 92-77 NPPA Comments at 9. CNS states that adoption of the proposed rule will save CNS alone \$100,000 to \$200,000 per month in out-of-pocket costs it incurs in transferring CIID card calls to AT&T. CNS argues that such savings will have a positive impact on OSPs' overall cost structures and would allow them to compete more effectively with AT&T rates. 92-77 CNS Reply Comments at 17.

<sup>55</sup> 92-77 MCI Comments at 1-3.

<sup>56</sup> Pub. L. 101-435, 104 Stat 986 (1990), 47 U.S.C. § 226.

<sup>57</sup> See e.g., 92-77 ITI Comments at 22; 92-77 CompTel Comments at 7-10.

experiences a network outage.<sup>58</sup>

37. The 0+ public domain proponents further argue that the harms of AT&T's proprietary card usable with 0+ access are not counterbalanced by any significant consumer benefit. Sufficient mechanisms already exist for consumers to identify the presubscribed carrier and to dial extra digits if they wish to select AT&T instead. Finally, MCI and several OSPs maintain that 0+ public domain should have no adverse impact on the cost of BPP or otherwise affect its implementation.<sup>59</sup>

38. Costs. Several IXC's, most LECs, one user group, and several state consumer offices oppose 0+ public domain. AT&T argues that 0+ public domain is an arbitrary restriction on 0+ access which would only harm consumers by impeding their ability conveniently to place calling card calls, and would benefit only the OSPs. It would disserve the interests of tens of millions of customers who have come to rely on their AT&T calling cards to assure they will receive AT&T service and AT&T rates. AT&T, if given the choice under 0+ public domain, states that it would choose to keep its CIID card proprietary. Therefore, the remedy would drive customers away from the 0+ dialing protocol for interLATA calling that the Commission itself has tentatively concluded should be encouraged under BPP.<sup>60</sup> The near term impact would be needless confusion and inconvenience for tens of millions of customers,<sup>61</sup> a consequence not in the public interest.<sup>62</sup>

39. The 0+ public domain argument, according to AT&T, ignores the principle of customer choice, which the Commission's equal access rules establish as the cornerstone of competition in the IXC marketplace. AT&T asserts that its current proprietary CIID format card is in large part a response to customers' demands for protection from OSP practices.<sup>63</sup> In

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<sup>58</sup> 92-77 Phonetel Comments at 14.

<sup>59</sup> 92-77 MCI Comments at 5; 92-77 CompTel Comments at 14; 92-77 ComTel Comments at 7; 92-77 ZPDI Comments at 13-14.

<sup>60</sup> Accord, 92-77 Sprint Comments at 7, 13-14; 92-77 US West Comments at 5-6; Ameritech Comments at 4; 92-77 Colorado OCC Reply Comments at 5.

<sup>61</sup> 92-77 SDN Users Comments at 1-3. SDN Users also argues that AT&T system enables AT&T's customers to avoid being carried and billed by IXCs that charge higher, non-competitive rates.

<sup>62</sup> 92-77 AT&T Comments at 1, 5-7, 9-10 and Reply Comments at 2, 5-7, 11; 92-77 Colorado OCC Reply Comments at 1-3.

<sup>63</sup> 92-77 AT&T Comments at 1, 4-5 n. \*\* and Reply Comments at 4-6; 91-115 AT&T Comments at 17-18. SDN Users, an AT&T customer group, argues that AT&T should not be required to share its proprietary validation and billing database with other IXC's. SDN Users states that at customers' request, AT&T invested much time and money to develop a system that precludes sharing of data with

addition, AT&T maintains that it would be anti-competitive to force AT&T or any other IXC to make its own technology and customer data available to competitors because this would distort efficiencies and thwart incentives for innovation by IXCs. It maintains that the Commission's procompetitive policies can only be advanced if IXCs strive to differentiate their services and features. <sup>64</sup>

40. Sprint states that if proprietary cards are defined by the dialing instructions given by the IXC, AT&T would presumably instruct all of its cardholders to begin using its 10XXX or 800 access codes. Such a remedy would do nothing to stem its present advantage in the presubscription of public phones, and may do little, if anything to mitigate the ease-of-use advantage that AT&T's calling card now enjoys over cards issued by other IXCs. <sup>65</sup>

41. Several state commissions and consumer offices oppose placing 0+ access in the public domain. <sup>66</sup> Colorado OCC, for example, argues that telephone consumers desire stability in prices and practices for using public telephones after enduring the significant changes since divestiture. <sup>67</sup>

42. Most of the LECs are opposed to the proposed interim solution. In general, they believe that it is a potentially costly, disruptive, and unworkable remedy and that industry resources would be more wisely spent concentrating on the long-term BPP proposal. <sup>68</sup> The LECs argue that they would be left with stranded investments in network and billing systems made to comply with MFJ court rulings requiring the BOCs to accept all proprietary IXC cards. <sup>69</sup> Bell Atlantic argues the Commission should not make consumers spend thousands of extra hours per year dialing where there is no offsetting benefit to them or to interexchange competition. Bell Atlantic cites the estimate contained in the Notice indicating that approximately half the interLATA calls from public phones are made by callers presubscribed to AT&T from stations

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other carriers so that customers can avoid being carried and billed by IXCs that charged higher, non-competitive rates than those available from AT&T. SDN Users argues that mandating dial around to reach a specific IXC is not in the best interests of the customer because it is less convenient than 0+ dialing, which users prefer. 92-77 SDN Users Comments at 1-3.

<sup>64</sup> 92-77 AT&T Comments at 4; 91-115 AT&T Opposition at 17.

<sup>65</sup> 92-77 Sprint Comments at 1-4.

<sup>66</sup> See 91-115 Iowa Utilities Board Comments at 1-3; 91-115 MDPS Comments at 1-2; 92-77 PUCO Reply Comments at 1-2.

<sup>67</sup> 92-77 Colorado OCC Reply Comments at 1-3.

<sup>68</sup> See e.g. 92-77 GTE Comments at 1-6; 92-77 NYNEX Comments at 3-4; 92-77 SWBT Comments at 5-6; 92-77 Ameritech Comments at 2-3; 92-77 US West Comments at 6-7; 92-77 USTA Comments at 2,5; 91-115 United/Sprint Comments at 2.

<sup>69</sup> 92-77 SWBT Comments at 4-5.

presubscribed to AT&T. <sup>70</sup> Bell Atlantic estimates that this would represent more than 85 million calls per year from Bell Atlantic payphones alone, and does not include aggregator locations. According to Bell Atlantic, if callers use the AT&T CIID card for only twenty-five percent of these calls, the proposal being considered by the Commission would require consumers to needlessly dial access codes on more than 20 million calls a year from its payphones alone. Further, the five-digit Feature Group D access code (10XXX) will become seven digits (101XXXX) in 1995 with the expansion to a four-digit carrier identification code. <sup>71</sup>

43. Bell Atlantic and USTA argue that the remedy could also cause the LECs to lose significant intraLATA revenues because access code calling will divert 0+ intraLATA traffic from the LECs, who currently carry it, to the IXC who issued the card. <sup>72</sup> USTA also points out that the proposal would permit some OSP competitors improperly to avoid the normal costs of doing business in the competitive long distance market, reduce network efficiency, and introduce significant new costs. <sup>73</sup>

#### b. Discussion

44. We conclude that the proposed interim 0+ public domain remedy would not serve the public interest. We conclude that the customer inconvenience, frustration and potential cost it would impose would outweigh the benefits. As we discuss in Section III.C.1, *infra*, we find that a more focused and narrowly tailored remedy will best serve the public interest in the interim while we consider the question of implementing the more comprehensive billed party preference system to replace presubscription at public phones.

45. The record demonstrates that 0+ public domain has significant costs, of which the most important is customer inconvenience. The majority of commenters advocated that, under 0+ public domain, the IXC card issuer should choose whether to issue a shared access or proprietary card. <sup>74</sup> AT&T has unequivocally stated that, if given the choice, it will keep its CIID card validation database proprietary. <sup>75</sup> The result would be that AT&T's 25 million CIID cardholders would be instructed by AT&T to dial an access code, even from

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<sup>70</sup> Notice, 7 FCC Rcd at 3030, n.25.

<sup>71</sup> 92-77 Bell Atlantic Comments at 2-3; see also 92-77 GTE Comments at 6.

<sup>72</sup> 92-77 NYNEX Comments at 1-3; 92-77 Bell Atlantic Comments at 3. Bell Atlantic estimates that it stands to lose in excess of \$20 million intraLATA operator-assisted call revenues if the proposal is implemented.

<sup>73</sup> 92-77 USTA Comments at 6-7.

<sup>74</sup> See, e.g., 92-77 MCI Comments at 4; 92-77 Sprint Comments at 4; 92-77 CNS Comments at 8-9; 92-77 APCC Comments at 16; 92-77 USTA Comments at 8; 92-77 ZPDI Comments at 7.

<sup>75</sup> 92-77 AT&T Comments at 5 and Reply Comments at 5.

phones presubscribed to AT&T for which 0+ dialing would suffice. Accordingly, the remedy would force AT&T CIID cardholders to dial extra digits where they could otherwise reach AT&T by dialing only 0+. <sup>76</sup> In addition, if BPP is adopted these same customers will again be forced to change their dialing patterns. Thus, the remedy would be unnecessarily disruptive to consumers.

46. It is also uncertain based on the record before us, that a 0+ public domain approach would substantially aid OSP competition for presubscription locations. As we observed in the Notice, AT&T is currently able to pay lower commissions per 0+ call than its competitors, yet still offer higher overall commissions due to its larger customer base. <sup>77</sup> While all OSPs would be able to compete equally to carry LEC card traffic and other types of 0+ calls, nothing would prevent AT&T from raising the commission payments on any remaining 0+ card traffic to make itself more attractive to aggregators and premises owners. It is clear that the major competitive benefit of increased parity in the operator services market claimed by the 0+ public domain proponents would only be realized if AT&T elected to open its CIID card database to its competitors. However, AT&T has made it quite clear that it would not open its CIID card database. In addition, the 0+ public domain proponents fail to acknowledge that AT&T's success in public phone presubscription competition may be attributed to factors other than commission payments, such as service quality. Finally, other benefits, such as the avoidance of unrecoverable CIID card call processing costs, can be achieved by the less burdensome consumer education requirement discussed in Section III.C.1, infra. <sup>78</sup>

47. We also find the alternative requirement proposed by some parties, that proprietary cards be eliminated de facto by requiring all IXC's to open their card databases to other IXC's, would not be in the public interest at this time. IXC proprietary cards are a useful vehicle for permitting consumer choice of carrier. We agree with many of the commenters who note that the availability of both proprietary and nonproprietary cards enables greater

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<sup>76</sup> If 0+ public domain is defined only in terms of the dialing instructions given by the card issuer (i.e., proprietary cards use proprietary access codes), its efficacy would depend upon customers refraining from dialing 0+ when placing a call with a proprietary card. Thus, 0+ public domain might become ineffective if AT&T cardholders discover that their calls can still be completed at AT&T presubscribed public phones on a 0+ basis. They would be likely to continue to use 0+ access indiscriminately, thus perpetuating the problems described by the OSPs in their comments.

<sup>77</sup> Notice, 7 FCC Red at 3030, para. 20.

<sup>78</sup> We note that here too, some of the alleged costs imposed on OSPs by AT&T's nonvalidation policy can be avoided by OSP investment in additional technology. For example, some LIDB validation query charges on CIID card calls could be avoided through the purchase of Bellcore products permitting the OSP to identify CIID card codes before launching a LIDB validation query.

consumer choice of carrier in the current presubscription environment.<sup>79</sup> Consumers who want to use 0+ access without ever having to concern themselves with learning access codes, and when to use them, may choose to carry a nonproprietary 0+ card, such as those freely available from the LECs. Such cards can be universally billed and validated. In contrast, consumers who have a strong preference for an IXC may currently choose to carry that IXC's proprietary card. They will be assured of being served only by the carrier of their choice, or by a carrier with whom that IXC chooses to enter into a business relationship.<sup>80</sup> Again, this is a choice currently open to all consumers. Finally, consumers may choose to carry two or more calling cards, each with different attributes and features, so as to maximize their range of choice as to dialing sequence and IXC carrier at all locations.

48. What AT&T's competitors fail to acknowledge is that, as AT&T has argued, the choice of carrier has been made by AT&T cardholders before they reach the public telephone, as evidenced by their seeking to use their AT&T CIID card. According to AT&T, it chose to issue a proprietary card in response to customer complaints about receiving operator services from other carriers. This consumer reluctance to give up AT&T's service is reflected in the fact that, as ITI has noted, three out of four AT&T customers decline the OSP's invitation to complete their calls as dialed by billing them to an alternate billing mechanism.<sup>81</sup> If, as many OSPs argue, some AT&T customers nonetheless want to choose, on a call-by-call basis, to use a competing OSP, they may still do so by charging the call to another calling, credit, or charge card, or to their home number, or collect.

49. In sum, we therefore find that the costs of a 0+ public domain approach as an interim solution outweigh the benefits. The proposal would most likely lead AT&T to move its proprietary card customers completely to dialing access codes. Therefore, the OSPs' share of billable 0+ traffic would not significantly change over current conditions. Thus, AT&T's attractiveness to aggregators as the presubscribed carrier is not likely to be greatly affected in the interim. Consumer choice would not expand significantly: those consumers who wish to use a different 0+ carrier for each card call they place from a public phone may do so today by acquiring and using a LEC joint use card. The gains which would accrue to OSPs from 0+ public domain, such as the avoidance of unbillable and completeable calls over their facilities, can be

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<sup>79</sup> Even the 0+ public domain proponents recognize that the policies embodied in TOCSIA support full and informed customer choice of carrier.

<sup>80</sup> AT&T's CIID cardholders may charge their intraLATA calls to their CIID cards pursuant to Mutual Honoring Agreements between AT&T and the LECs. In such cases, CIID cardholders are not assured of AT&T service at AT&T rates; nonetheless, they are assured of service by carriers whom AT&T has chosen to allow to access its CIID card validation database. Similarly, the record indicates that AT&T has made similar database access arrangements with GTE Airfone and Alascom for acceptance of its CIID card. See 92-77 ATC Comments at 3 and Reply Comments at 4; 92-77 ZPDI Comments at 6.

<sup>81</sup> 91-115 ITI Comments at 7.

accomplished through more targeted means of effective consumer education, as we discuss in Section III.C.1, infra. The major gain sought by the OSPs, competitive parity in public phone presubscription, cannot be achieved under the 0+ public domain proposals' conditional choice of either 0+ access with a shared database or proprietary access for proprietary cards.

50. In Phase 2 of this proceeding we will evaluate whether BPP is the best long term solution to the structural competitive problems identified in the Notice and in Section III.A., supra.<sup>82</sup> If we conclude that it is not, we may again review the condition of the operator services market and reexamine the interim remedies interested parties have proposed in this phase of the docket.

### C. Alternative Remedies

51. In the Notice we invited parties to discuss alternative proposals presented to address the alleged problems raised by AT&T's introduction of a proprietary calling card, including the costs, benefits and jurisdictional bases of such remedies.<sup>83</sup>

#### 1. Consumer Education

##### a. Positions of the Parties

52. Many commenters advocated consumer education and related measures as interim solutions to the competitive situation in the operator services market.<sup>84</sup> Bell Atlantic suggests that the Commission should hasten the unblocking of 10XXX access codes and require all calling card issuers to educate their cardholders about the proper way to reach them. NYNEX contends that the Commission should order AT&T to notify its CIID card customers that the traditional line number calling card is still available from the LECs, and that AT&T will continue to honor these LEC line number cards on its network.<sup>85</sup> USLD proposed that AT&T include specific instructions as to the availability of AT&T's mandated 800 access number, in order that its customers be assured of reaching AT&T, if they so desire, without unfairly burdening competitors' networks. ZPDI adds that AT&T should also be required to disclose that a nonproprietary card alternative exists. USLD adds that by requiring proprietary card issuers to educate their customers to dial the applicable proprietary access code before placing a long distance operator assisted call,

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<sup>82</sup> Notice, 7 FCC Rcd at 3030, paras. 20-21, 3033 paras. 39-41.

<sup>83</sup> Notice, 7 FCC Rcd at 3034, para. 43.

<sup>84</sup> See e.g., 92-77 ATC Comments at 4-5; 92-77 ZPDI Comments at 6-7; 92-77 Cleartel/Com Systems Comments at 13; 92-77 USLD Comments at 8.

<sup>85</sup> 92-77 Bell Atlantic Comments at 1-4; 91-115 NYNEX Comments at 2 and 92-77 NYNEX Comments at 3. Accord 92-77 SWBT Comments at 4; 92-77 WillTel Reply Comments at 4 (and provide CIID card users with instructions on replacing any LEC cards that have been destroyed or discontinued).



most of the significant consumer benefits are achieved without the imposition of any costs.<sup>86</sup>

53. CNS observes that AT&T has not made its 800 access number easy for its customers to find or use. CNS notes that although Commission regulations under TOCSIA require OSPs to maintain 800 or 950 access numbers, AT&T has yet to establish and effectively promote an 800 or 950 access number that automatically connects calls upon entry of the calling card account number. Instead, AT&T has placed its 800 customer service number on the backs of its CIID cards, but that number is not included as part of the card dialing instructions. Thus, customers may not realize that they can use that number at public phones where AT&T's 10XXX access code is blocked. CNS states that should a customer dial the 800 customer service number, the caller is first given a menu of service options, and then told to hang up and dial the AT&T network via its 10XXX code. CNS states that AT&T's 800 access number is not well advertised, is no more convenient to use than its 800 customer service number, and does not comply with the Commission's requirements.<sup>87</sup>

54. AT&T supports Bell Atlantic's argument that hastening the unblocking of 10XXX access at aggregator phones will mean that the other carriers will have to handle fewer calls destined for carriers other than the presubscribed IXC. AT&T also advocates enforcement of existing signage and audible carrier identification (branding) on all operator service calls at aggregator locations as the means to decrease the inconvenience, frustration and confusion customers experience at aggregator locations as a result of 10XXX code blocking and inadequate signage identifying the 0+ carrier.<sup>88</sup>

#### b. Discussion

55. We find that consumer education is the interim remedy best suited to the immediate consumer and competitive problems caused by AT&T's dialing instructions. As an interim matter, pending a final resolution of this docket, this remedy best balances the interests of AT&T's cardholders, AT&T's competitors, and AT&T. AT&T's dialing instructions have directed CIID

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<sup>86</sup> 92-77 ZPDI Comments at 7-10; accord 92-77 Sprint Reply Comments at 6 (LECs, not AT&T, should contact affected customers); 92-77 USLD Comments at 14. Several commenters contend that AT&T must be required to re-issue its CIID cards with correct dialing instructions. 92-77 Cleartel/Com Systems Comments at 13; accord 92-77 ATC Reply Comments at 3; 92-77 ZPDI Comments at 7. These parties argue that mere notice of a change in the access method is not likely to be effective in changing users' 0+ dialing habits.

<sup>87</sup> 92-77 CNS Comments at 9 n.13, 13, citing Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rod 4736, 4743 (1991); 47 C.F.R. § 64.704(d) (all providers of operator services shall establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph); accord 92-77 Phonetel Comments at 4; 92-77 Cleartel/Com Systems Comments at 4-5 n.6.

<sup>88</sup> 92-77 AT&T Reply Comments at 10 & n.\*\*\*.